

**REMARKS**

In light of the above amendments and following remarks, reconsideration and allowance of this application are respectfully requested.

It is submitted that these claims, as originally presented, are patentably distinct over the prior art cited by the Examiner, and that these claims were in full compliance with the requirements of 35 U.S.C. §112. Changes to these claims, as presented herein, are not made for the purpose of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112. Rather, these changes are made simply for clarification and to round out the scope of protection to which Applicant is entitled.

Claims 6, 14 and 16, and amended claims 1-5, 7-13, 15 and 17-22 are in this application. Claims 23-30 are newly added. No new matter has been added.

At paragraph 4 of the outstanding Office Action of December 17, 2003, the Examiner rejected claims 1-4, 6, 8-14, 16 and 18-22 under 35 U.S.C. § 102(b) as being anticipated by Murphy (U.S. Patent No. 6,225,590). Applicant respectfully traverses the rejections.

Amended independent claim 1 now recites in part as follows:

“A method of controlling **intellectual content or functional** access to one of at least a system and a commodity **before and after** the system or commodity is delivered to a user by a provider...comprising the steps of...**controlling intellectual content or functional access of the user to the system or commodity in a pre-delivery and post-delivery period . . .**”

(Underlining and bold added for emphasis.)

It is respectfully submitted that Murphy does not teach the above-recited features added to amended independent claim 1.

Murphy discloses a system for imposing restrictions on control of use of a vehicle by a vehicle operator. The problem posed by Murphy is how to monitor the restricted operator's use of the vehicle. Murphy solves that problem by providing a location determination system and control system that are capable of distinguishing between operators, determining the present position of the vehicle, comparing the present vehicle location to a permitted vehicle confinement area and setting permitted time intervals by obtaining biometric samples from the vehicle operator before the vehicle is used. Therefore, Murphy's invention is limited to controlling only a vehicle traveling from one predetermined location to another predetermined location.

In contrast, the present invention and amended independent claim 1 as recited herein teach the controlling of intellectual content or functional access by a provider in a pre-delivery and post-delivery period. For example, if a user in a country other than the United States has purchased a software product from a U.S. provider, then the software product is protected from piracy before the software product is delivered to the user and after the user has received the software product. This is not the case with Murphy, which merely monitors a vehicle carrying cargo. Murphy does not directly monitor the cargo carried by the vehicle. Also, for the sake of discussion, even if Murphy did directly monitor the cargo—which is not the case—then Murphy would still not be concerned with the cargo once it was delivered to the user. In Murphy, once the user receives the cargo, it is the responsibility of the user to handle such cargo from that point on. In other words, the provider has no control or interaction with the cargo once delivered to the user. Therefore, Murphy is also not concerned with both a pre-

delivery period and a post-delivery period of the cargo, as is the case in amended independent claim 1.

Furthermore, independent claim 1 has been amended herein to recite, “controlling intellectual content or functional access of the user.” Murphy is not concerned with controlling any intellectual content contained in the cargo carried by the vehicle. Murphy is simply concerned with controlling the vehicle itself.

Moreover, independent claim 1 has been amended herein to recite, “extending intellectual content or functional control access capabilities of the user to the system or commodity from one location to another in varying time intervals and for transportable use.” In other words, a license and thus the intellectual content of a software product can be extended from one location to another. For example, if an individual purchases a software product that can only be used in one country and wants to use that same software product in another country, then the user can do one of the following: a) contact the provider in order to employ such software product beyond the originally negotiated range, b) provide temporary use by extending a replenishment interval or c) add a location to a permitted list of licensed locations. This is not the case with Murphy in which the vehicle operator is not permitted to request a change of course of the vehicle once the course has been verified by the controlling or location detection system. Furthermore, if one was to apply the “extending intellectual content or functional control” concept to the cargo (instead of the vehicle) mentioned in Murphy, one would still not be able to apply such a concept because once the user receives the cargo, it is the responsibility of the user to handle such cargo from that point on. Therefore, the user cannot contact the provider of such a system for an extension of time or location.

Additionally, independent claim 1 has been amended herein to recite, "wherein a plurality of identical systems or commodities located in different locations are permitted to be simultaneously controlled by the provider." For example, the same software product sold to several hundred users across the U.S. can be controlled by the provider simultaneously for a common upgrade. Murphy does not teach this concept. *Fleet?*

Applicant therefore submits that Murphy fails to disclose the additional features of amended independent claim 1.

For similar reasons, it is believed that amended independent claims 11, 21 and 22 are also distinguishable from Murphy as applied by the Examiner.

Furthermore, claims 2-4, 6, 8-10, 12-14, 16 and 18-20 depend either directly or indirectly from one of amended independent claims 1 and 11, and are therefore distinguishable for this reason alone. Additionally, these claims present novel combinations in and of their own right. Therefore, claims 2-4, 6, 8-10, 12-14, 16 and 18-20 are believed to be distinguishable over Murphy.

Applicant therefore respectfully requests that the rejection of claims 1-4, 6, 8-14, 16 and 18-22 under 35 U.S.C. § 102(b) be withdrawn.

At paragraph 5 of the outstanding Office Action of December 17, 2003, the Examiner rejected claims 9, 10, 19 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Murphy (U.S. Patent No. 6,225,590) and Schipper (U.S. Patent No. 5,969,595). Applicant respectfully traverses the rejections.

Claims 9, 10, 19 and 20 depend from one of amended independent claims 1 and 11 and, due to such dependency, are also believed to be distinguishable over Murphy for at least the reasons previously described. The Examiner did not rely on Schipper to overcome the

above-identified deficiencies of Murphy. Therefore, claims 9, 10, 19 and 20 are believed to be distinguishable over the applied combination of Murphy and Schipper.

Applicant therefore respectfully requests the rejection of claims 9, 10, 19 and 20 under 35 U.S.C. § 103(a) be withdrawn.

At paragraph 6 of the outstanding Office Action of December 17, 2003, the Examiner rejected claims 5, 7, 15 and 17 under 35 U.S.C. § 103(a) as being unpatentable over Murphy (U.S. Patent No. 6,225,590) and Klanke (U.S. Patent No. 6,313,791). Applicant respectfully traverses that rejection.

Claims 5, 7, 15 and 17 depend from one of amended independent claims 1 and 11 and, due to such dependency, are also believed to be distinguishable over Murphy for at least the reasons previously described. The Examiner did not rely on Klanke to overcome the above-identified deficiencies of Murphy. Therefore, claims 5, 7, 15 and 17 are believed to be distinguishable over the applied combination of Murphy and Klanke.

Applicant therefore respectfully requests the rejection of claims 5, 7, 15 and 17 under 35 U.S.C. § 103(a) be withdrawn.

Applicant has further added new claims 23-30. Applicant submits that the 35 U.S.C. §§ 102(b)/103(a) rejections relied upon by the Examiner do not apply to claims 23-30, and submits that the rejection of these claims under §§ 35 U.S.C. 102(b)/103(a) would be improper.

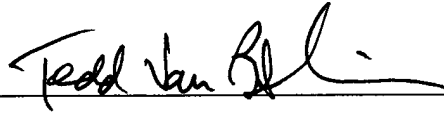
The Examiner has apparently made of record but not relied upon several U.S. Patents. Applicant appreciates the Examiner's explicit finding that these documents, whether considered alone or in combination with others, do not render the claims of the present application unpatentable.

It is to be appreciated that the foregoing comments concerning the disclosures in the cited prior art represent the present opinions of Applicant's undersigned attorney, In the event that the Examiner disagrees with any such opinions, Applicant respectfully requests that the Examiner indicate the bases in the reference for such contrary view.

Please charge any fees incurred by reason of this response and not paid herewith to Deposit Account No. 50-0320.

Respectfully submitted,

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A handwritten signature in dark ink, appearing to read "Tedd W. Van Buskirk", is written over a horizontal line.

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